

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CA06-1276

June 13, 2007

JOHNNY M. HELTON
APPELLANT

AN APPEAL FROM ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NOS. F311952, F311953]

V.

WAL-MART, INC.
APPELLEE

AFFIRMED

On August 14, 2006, the Workers' Compensation Commission affirmed and adopted the opinion of the administrative law judge (ALJ), which rejected several constitutional challenges to the Commission's adjudication process and found that appellant Johnny Helton failed to prove that he suffered compensable neck and shoulder injuries, a compensable low back injury, or a compensable mental injury. Appellant contends that the Commission's decisions regarding the substance of his claims and his constitutional arguments are not supported by substantial evidence. We hold that the Commission properly found (1) that appellant failed to present objective findings to support evidence of a compensable neck or shoulder injury; (2) that appellant failed to prove that his low back injury arose out of and in the course and scope of his employment; and (3) that appellant failed to prove a compensable mental injury. We further hold that this court has adequately addressed appellant's constitutional arguments in a previous case and need not address them again. Accordingly, we affirm.

Background Facts

Appellant claimed that he suffered compensable injuries from two alleged incidents. At the hearing before the ALJ, appellant testified that he was moving boxes of Halloween costumes in October 2002 when a box fell on the side of his head and turned his neck to the left. He testified that he missed thirteen days of work because of the incident and that appellee paid his medical bills during that time. He denied suffering a workplace injury in August 2002.

Appellant also testified that on April 26, 2003, he picked up a wet bag of peat moss, then fell to his knees in pain. He stated that after he fell, he finished loading a van, went inside the store, told an associate that he was going to take a break, then returned and finished his day. He said that he reported the incident to Billy McGraw the next day. Appellant stated that he had also been seeing Dr. Stephen Dollins for depression because of the pain from the resulting injuries. He acknowledged that he was treated for depression in 2000 and part of 2001 after the death of his son and his divorce from his wife; however, he stated that he received no treatment for depression for one year prior to the April 26, 2003, accident. Appellant testified that he was depressed because he was in pain all of time and that because of the depression, he had lost his home, three vehicles, and his credit. He denied working until about May 13, 2003, and asserted that he was taken off work the day of the accident. While the parties stipulated that Michelle Moss, appellant's fiancée, would corroborate his testimony, Moss testified that appellant went to her home in extreme pain on April 26, 2003, and that appellant called work the next day to report the accident.

Terry Stover testified that he was helping appellant unload packages in October 2002. Stover stated that he was on a ladder handing boxes to appellant when appellant said that his shoulder hurt; however, the two continued working. Stover denied that a box fell on appellant or that appellant complained of neck or low back injuries.

Hubert Pickett testified that he was an assistant manager from October 2002 through April 2003. Pickett stated that he noticed that appellant was having problems with his neck and shoulder during that time. He testified that he never discussed the problems with appellant and that the problems never affected appellant's work.

McGraw testified that he supervised appellant in April 2003. He stated that company policy required employees to report work-related injuries to their supervisor, or their next-immediate supervisor if their supervisor were unavailable. McGraw denied receiving a report of a low back injury from appellant, and he did not recall modifying appellant's duties due to low back problems. He testified that he would have completed an incident report had appellant reported an injury.

Larry Griggs, appellee's risk control manager, testified that company policy requires employees to report injuries to a salaried employee within twenty-four hours of the incident. He stated that he reviewed the records related to appellant's claim and found no request for medical treatments pertaining to a low back injury in April 2003. On cross-examination, he stated that he first learned of appellant's claim for a low back injury in October 2003. Griggs noted that appellant did not work from April 2003 to October 2003 because appellant was on a leave of absence, though he did not know why appellant was on leave. Griggs also presented a form relating to an injury sustained in August 2002, where appellant suffered an injury to his neck and the top of his shoulder.

Appellant's addendum only contains five medical records.¹ The first record, dated April 28, 2003, indicates complaints of back and right leg pain with numbness in the right leg and radiation in his back. The medical note states that the pain had "[b]een going on for

¹While the record contains a number of other medical records, our review of a case on appeal is limited to the record as abstracted in the briefs. See *Hooker v. Farm Plan Corp.*, 331 Ark. 418, 962 S.W.2d 353 (1998).

some time, has gotten worse in the last couple of weeks.” Dr. Lonnie Robinson diagnosed appellant with back pain and sciatica. Next, the addendum contains an MRI report dated April 30, 2003, which showed disc disease at multiple levels, including protruding discs at L4-5 and L5-S1. The third record is an operative report by Dr. Scott Schlesinger, dated May 20, 2003. The report shows that Dr. Schlesinger performed a right L4-5 transpedicular microsurgical discectomy. Another MRI was taken on July 30, 2003, which revealed disk bulges at appellant’s lumbar spine and a small left paracentral disk herniation at L5-S1. Finally, appellant’s addendum contains a note from Dr. Thomas Hart dated October 18, 2004.² Dr. Hart diagnosed appellant with failed back surgical syndrome.

After rejecting his constitutional arguments, the ALJ denied and dismissed appellant’s claims for benefits. Regarding compensability for the alleged October 2002 injury, the ALJ found that appellant failed to present objective findings to support evidence of an injury to appellant’s neck or shoulder. He further noted that while appellant testified that he received treatment from the company doctor, none of the records from the company doctor were entered into evidence. Regarding compensability for the alleged April 2003 injury, the ALJ found that appellant failed to prove that his low back injury arose out of and in the course and scope of his employment. He noted that appellant’s and Moss’s testimonies were directly contradicted by appellee’s representatives and that the initial reports from three doctors fail to mention a specific incident at work as the cause of appellant’s low back condition. He particularly noted a medical record from Dr. Jeffrey Kornblum dated March 3, 2004, which related appellant’s symptoms to a date prior to appellant’s alleged April 2003 accident. Finally, the ALJ rejected appellant’s claim for mental health benefits. He found that appellant failed

²Dr. Hart noted that he did not have all of the information on appellant’s visit that day. In the recitation of the history of the illness, Dr. Hart stated that his history was strictly from appellant and his wife and that he had no information from Dr. Schlesinger.

to prove that a compensable physical injury caused his depression, that his depression was diagnosed by a licensed psychiatrist or psychologist, or that his diagnosis met the criteria established in the most current issue of the *Diagnostic and Statistical Manual of Mental Disorders*. The Commission affirmed and adopted the decision of the ALJ.

Standard of Review

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirm if that decision is supported by substantial evidence. *Smith v. City of Ft. Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Williams v. Prostaff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). The issue is not whether the reviewing court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). Normally, we only review the findings of the Commission and not those of the ALJ. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). However, when the Commission adopts the conclusions of the ALJ, as it is authorized to do, we consider both the decision of the Commission and the decision of the ALJ. *Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence. Ark. Code Ann. § 11-9-102(4) (Supp. 2005). Compensation must be denied if the claimant fails to prove any

one of these requirements by a preponderance of the evidence. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

Analysis

Appellant argues that substantial evidence does not support the Commission's finding that he failed to prove that he sustained a compensable injury to his neck in October 2002. He contends that his testimony established that he injured himself while moving boxes and that medical evidence supports his claim.

To receive benefits, a claimant must present medical evidence supported by objective findings to establish the existence of the injury. Ark. Code Ann. § 11-9-102(4). Objective findings are defined as "those findings which cannot come under the voluntary control of the patient." Ark. Code Ann. § 11-9-102(16)(A)(i). The objective findings are only necessary to establish the existence and extent of an injury. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

While appellant makes a blanket statement that the medical evidence of his neck injury is supported by objective findings, appellant fails to cite or identify any such record. Further, none of the medical records that he has provided in his addendum mention an injury to his neck. We hold that the Commission's decision regarding the compensability of appellant's alleged neck or shoulder injury is supported by substantial evidence.

Next, appellant argues that substantial evidence does not support the Commission's finding that he failed to establish a compensable low back injury. He contends that his testimony, as corroborated by Moss, is evidence that he suffered a low back injury in April 2003 and that his testimony is supported by medical records from Drs. Robinson, Schlesinger, and Kornblum.

However, appellant's argument does not refute the ALJ's discussion about why his low back injury is not compensable. Again, the ALJ found that appellant's account was contradicted by appellee's representatives, that the medical records do not mention a specific incident at work as the cause of appellant's condition, and that one medical record shows that appellant had the symptoms prior to April 2003. Out of the five medical records provided by appellant in his addendum, only two mention causation. The first is from Dr. Robinson, dated April 28, 2003, and notes "Been going on for some time, has gotten worse in the last couple of weeks. Lifts a lot at work at WalMart [sic]." The other is a note from Dr. Hart dated October 18, 2004. In that note, appellant's chief complaint was of pain in the lower back, hip, and leg, which appellant stated began two-and-a-half years ago, long before the date of the alleged injury. While the note also mentions a significant onset of pain after lifting a bag of humus, the note contains no time frame regarding that incident.

If anything, the medical records show that appellant's condition predated the April 2003 incident that appellant alleges caused his injury. We hold that the Commission's finding that appellant did not suffer a compensable injury to his low back is supported by substantial evidence.

Appellant argues that substantial evidence does not support the Commission's finding that he failed to prove that he suffered a compensable mental injury. He contends that a licensed psychiatrist had treated him for depression and that the condition was consistent with the most recent issue of the *Diagnostic and Statistical Manual of Mental Disorders*.

Under Ark. Code Ann. § 11-9-113(a):

(1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.

(2) No mental injury or illness under this section shall be compensable unless it is also

diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

Again, the Commission's decision is supported by substantial evidence. First, because appellant has failed to prove that he suffered a compensable physical injury, he cannot show that he has proven a compensable mental injury. Even if appellant had proven the existence of a compensable physical injury, he failed to produce a record showing that a mental health professional diagnosed him with depression resulting from his low back pain or that such a diagnosis was consistent with the *Diagnostic and Statistical Manual of Mental Disorders*. Substantial evidence supports the Commission's decision that appellant failed to prove a compensable mental injury.

Constitutional Arguments

Finally, appellant makes a number of constitutional arguments. Specifically, he alleges that the executive branch and private interests have exerted pressure on the Commission and the ALJs to the point where it has infringed on the independence of the Commission and resulted in biased decisions. Appellant contends that such procedures violate the separation of powers doctrine established by the Constitution of the State of Arkansas and the due process rights of the parties appearing before the Commission. However, we rejected the same arguments in *Long v. Wal-Mart Stores, Inc.*, — Ark. App. —, — S.W.3d — (Feb. 21, 2007). There is no reason to review these arguments again.³

Affirmed.

HART and GLOVER, JJ., agree.

³Except for the addition of a summation of his constitutional argument, appellant's argument is – word for word – the same argument as the one made in *Long*.